

DATE: June 30, 1995

BQC #95-029

TO: Nursing Homes

NH 19

Effective Date: 7/1/95

FROM: Judy Fryback, Director  
Bureau of Quality Compliance

SUBJECT: **New Nursing Home Survey Protocol and Enforcement Regulations - Third Memo**

## **FEATURED TOPICS:**

- **REPORT ON TRIAL SURVEY**
- **ALLEGATION OF COMPLIANCE**
- **INFORMAL DISPUTE RESOLUTION**
- **OMBUDSMAN PROGRAM**
- **OSCAR REPORTS**
- **HHS NEWS UPDATE**

### **Report on Trial Survey**

A trial survey was conducted at Lakewood Care Center, Milwaukee, from June 13th through 15th. Surveyors from the Bureau of Quality Compliance used the new survey forms and tried out the decision making map. Generally, the survey went well. Insights were gained, and questions arose that we are addressing. We appreciate Lakewood Care Center allowing us to 'practice' at their facility.

### **Allegation of Compliance**

When the facility has corrected, or believes they will have the deficiency corrected, they may make, in writing, an *allegation of compliance*. This should include the action they have taken, or will take, to correct the deficiency, and the date in which they have, or will return to substantial compliance.

The allegation of compliance can be included in a plan of correction. According to 42 CFR 488.402(d), nursing facilities are required to submit a plan of correction (PoC) for each citation, except when a facility has isolated deficiencies that constitute no actual harm with potential for no more than minimal harm. Please refer to BQC memo #95-022.

The State Agency will determine if the allegation is credible, and send notice to the provider. If the State Agency accepts the allegation, a revisit is scheduled for verification of compliance. If the deficiency is not corrected at the revisit, remedies will be recommended. If the allegation is not accepted, the State Agency will recommend going forward with the required remedies.

### **Informal Dispute Resolution Update**

If the facility disagrees with the survey findings, a PoC must be submitted. Prior to July 1, 1995, the provider was able to record objections to the cited deficiencies and attempt to provide convincing arguments rather than submit a PoC. This is no longer an option. Instead, the facility may now request informal dispute resolution (IDR) and/or appeal the certification of noncompliance if it leads to a remedy. Slight changes have been made in the informal dispute resolution process and are outlined in the attached memo.

As part of its quality improvement process, BQC contacted approximately one-third of the nursing homes that had used IDR. The feedback indicated that 90% were pleased with the process and thought that BQC provided an impartial review of the deficiencies in dispute. Providers indicated concern about the short timeframes for requesting IDR and submitting information. In response to these concerns the timeframes have been increased. These changes are effective July 1, 1995.

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- Facilities now have 3 days rather than 2 to request IDR;
  - Facilities now have 6 days rather than 5 to submit written documentation that supports the facility's position.

**As the 2567 packet must be sent to the Health Care Financing Administration (HCFA) within 45 days of the date of exit, requests submitted on this timeline will ensure a face-to-face or telephone IDR discussion, and adequate time to modify the survey packet to reflect any changes.**

However, pursuant to the State Operations Manual (SOM), providers have 10 days to submit a written request for IDR and document why they are disputing specific deficiencies. Due to the timeline for submission of survey packets to HCFA, there will be no opportunity for discussion with the provider on IDRs requested under the SOM provision.

During the first quarter of 1995, 26% of federally-certified nursing homes that had deficiencies requested IDR. This accounted for 12% of deficiencies issued during the first quarter. Of the deficiencies that went to dispute resolution:

- 46% remained as written;
- 27% were withdrawn by BQC;
- 13% had examples deleted;
- 6% were rewritten;
- 3% were placed under another tag;
- 4% data not entered as this time.

## **Ombudsman Program**

The links between the Department of Health and Social Services and the Board on Aging and Long Term Care have recently been documented in a memorandum. The following summarizes the agreement between the two:

- The State Agency will provide prior notice to the Ombudsman regarding the survey schedule. Confidentiality will be maintained.
- The regional Ombudsman will share information they have received on care and treatment provided by a facility scheduled for survey, and participate in activities during the survey as possible.
- The State Agency will share information relating to survey, IDR, and enforcement actions with the Ombudsman.
- The state Agency will refer non-regulatory issues to the Ombudsman, and the regional Ombudsman will refer to the State Agency matters that involve licensure and certification.
- The State Agency and Ombudsman may jointly investigate a complaint.
- The State Agency and Ombudsman will work collaboratively in other efforts to assure quality of care provided by nursing homes.

## **OSCAR Reports**

Beginning July 1, 1995, a complimentary copy of the OSCAR #3 and OSCAR #4 reports will be provided to the facility upon entrance of the State survey team. The new tag numbers will not be in the OSCAR system until after August 15. Also, as of that date, the old tag numbers will be converted to the new. To receive a copy at a time other than the survey, send your request to:

Diane Evensen  
Division of Health  
P.O. Box 309  
Madison, WI 53701-0309

Please enclose \$5.00 per report, made out to the Division of Health.

To receive the OSCAR reports from HCFA, contact Phyllis Panega at (312) 353-8858. The cost is \$25.00.

## HHS News Update

The following is a statement released by Mr. Bruce Vladeck, Administrator, Health Care Financing Administration, dated 6/27/95.

"As Secretary Shalala made clear earlier this month, the Health Care Financing Administration is proceeding on schedule with the implementation of the Nursing Home Survey and Enforcement regulations on July 1. These regulations represent the final step in bringing about nursing home reform and assuring high quality care for nursing home residents.

"As has been the case throughout the process of developing and implementing these regulations, we are committed to extensive public consultation and interaction with all interested parties. In addition, we are planning very extensive monitoring of the implementation process, and we will be prepared to make such adjustments in our policies and procedures as we determine may be needed.

"In any situation of 'immediate jeopardy,' or in the case of chronic offenders, HCFA and the states would act immediately and decisively to protect nursing home residents by imposing sanctions. For other nursing homes, however, our regulations provide a period of time during which penalties would not be collected. This provision was included in our regulations because it puts the emphasis on correcting problems, not simply assessing fines. One effect of this provision will be that no fines will be collected during the first 90 days of implementation. Thus, during this initial implementation period, we will have time to observe the regulations in action before any fines must be collected.

"Our ultimate goal is a collaborative effort between industry, consumers and government to deliver high quality care to nursing home residents. No nursing home which fails to meet quality standards will be immune from the appropriate sanctions. Likewise, no nursing home which meets the standards will be subject to any penalties."

## Top Tips for Survey Preparation!

1. Identify staff who are familiar with the residents? lives in the nursing home to accompany the survey team.
2. Interview your residents using the same questions that surveyors will ask in order to gain insight into their level of satisfaction regarding care and services.
3. Conduct a mock survey of your facility looking for areas that need improvement.

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### Attachments:

- Selected survey forms
- State Operations Manual (SOM) Survey, Certification and Enforcement Regulations
- State Operations Manual (SOM) Survey Protocol/Guidelines
- Informal Dispute Resolution Memo

### cc:-BQC Staff

- Office of Legal Counsel
- Ann Haney, DOH Admin.
- Kevin Piper, BHCF Dir.
- HCFA, Region V, M. Dykstra
- Illinois State Agency
- Ohio State Agency
- Michigan State Agency
- Indiana State Agency
- Minnesota State Agency
- WI Coalition for Advocacy
- Serv. Employees Inter. Union
- WI Counties Assn.

- WI Health Info. Mgmt. Assn..
- WI Assn.. of Homes & Serv/Aging
- St. Med. Society (Comm. Aging...)
- WI Health Care Association
- WI Assn.. of Medical Directors
- Admin., Division of Care and Treatment Facilities
- WI Assn.. of Hospital SW and Discharge Planners
- Bd. on Aging & Long Term Care
- Bur. of Design Prof., DRL
- LTC BQC Memo Subscribers
- Mark Bunge, BPH
- DD Board